

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

DAVID EARL FLOWERS §
VS. § CIVIL ACTION NO. 1:07-CV-972
JEFFERSON COUNTY JUDICIAL SYSTEM §

MEMORANDUM ORDER OVERRULING PETITIONER’S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Petitioner David Earl Flowers, a prisoner confined at the Jefferson County Correctional Facility, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the petition without prejudice for failure to exhaust available state court remedies.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.


The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit. Petitioner admits that he did not exhaust state court remedies, but requests that this case be stayed while his petition for discretionary review is pending before the Texas Court of Criminal Appeals. Petitioner has offered no reason why the case should be stayed

rather than dismissed. Because the statute of limitations will not bar a future federal petition, this petition will be dismissed without prejudice.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with this memorandum order.

SIGNED this the **14** day of **January, 2008**.


Thad Heartfield
United States District Judge